

Message Text

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ACTION EUR-12

INFO OCT-01 ISO-00 SEC-01 JUSE-00 EB-08 COME-00 TRSE-00

OMB-01 L-03 PA-02 PRS-01 CIAE-00 INR-07 NSAE-00

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-----031716 021205Z /21

O 021047Z DEC 77

FM AMEMBASSY BERN

TO SECSTATE WASHDC IMMEDIATE 5352

UNCLAS BERN 5666

PASS SEC FOR BOROWSKI

EO 11652: NA

TAGS: CFED SZ

SUBJ: AIC CASE

REF: BERN 5664

WHAT FOLLOWS IS TEXT OF EMBASSY OCT 28 LETTER TO MUELLER,
DIR, SECRETARIAT, FEDERAL BANKING COMMISSION:

QTE YOU MAY RECALL THAT I RAISED QUESTION OF TAX
LIABILITY IN CONNECTION WITH AMERICAN INSTITUTE
COUNSELORS CASE WITH YOU ON TELEPHONE ABOUT A WEEK
OR SO AGO.

SINCE THEN I HAVE SPOKEN TO DR STUDER, WHO HAS HAD
MEETING WITH DR LOCHER OF FEDERAL DEPT OF FINANCE.
DR STUDER TELLS ME THAT DR LOCHER IS REVIEWING
SITUATION, WHICH WAS BROUGHT TO HIS ATTENTION BY
COOPERS LYBRAND OF BASEL, AND THAT AT THIS POINT HE
COULD MAKE NO JUDGMENT ON THIS CASE.

DR STUDER AND SEC BELIEVE IT WOULD BE HELPFUL IF
I SENT DR LOCHER A LETTER EXPLAINING THE CIRCUMSTANCES
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AND MY RECOLLECTION OF DISCUSSIONS ABOUT TAXATION.
I DID NOT WISH TO DO SO WITHOUT FIRST CONSULTING YOU.
WHAT I WOULD PROPOSE IS LETTER ALONG FOLLOWING LINES:

BEGIN DRAFT TEXT: QTE: I CLAIM NO PERSONAL EXPERTISE
WHATSOEVER ON SWISS TAX MATTER. I WOULD, HOWEVER, LIKE
YOU TO BE AWARE OF FOLLOWING CIRCUMSTANCES AS THEY RELATE

TO ARRANGEMENTS WORKED OUT BY REPS OF SWISS AND AMERICAN GOVTS FOR A SETTLEMENT AND LIQUIDATION OF INVESTORS ASSETS IN A CASE INVOLVING PROGRESS GROUP (MONDIAL), AMERICAN SEC AND AMERICAN COURTS, AND RESPONSIBLE SWISS GOVT AUTHORITIES.

THIS WAS CONSIDERED TO BE MATTER FOR INTL CONSIDERATION AND COOPERATION SINCE LAWS AND JURISDICTIONS OF TWO COUNTRIES -- THOSE OF SWITZERLAND AND THOSE OF US -- WERE INVOLVED. AS RESULT OF DISCUSSIONS BETWEEN SWISS AND AMERICAN AUTHORITIES, SEPARATE ACTIONS WERE TAKEN BY EACH GOVT. THEIR PURPOSE WAS TO AVOID IN-URY TO THOUSANDS OF INNOCENT INVESTORS, AND TO RESTORE ASSETS OF THOSE INVESTORS TO THE.

IN SWITZERLAND, THE SWISS FEDERAL BANKING COMMISSION ISSUED A DECREE INTENDED TO ACHIEVE THIS RESULT. THIS DECREE SPECIFICALLY PROVIDES, IN PARA ONE, FOR DISTRIBUTION TO INVESTORS OF ALL ASSETS HELD BY MONDIAL IN THE METRIC ACCOUNTING UNIT STORAGE AGREEMENTS, METRIC ACCOUNTING UNIT SURVIAL CONTACTS, MONTE SOLE PARTICIPATING LEASES, SOVEREIGN CONTRACTS, AND GOLD COIN COLLECTION SUB-CCOUNTS. THE DECREE MAKES NO REF TO AND DOES NOT PROVIDE FOR PAYMENT OF ANY SUBSTANTIAL SWISS TAXES. FURTHERMORE, SWISS BANKING COMMISSION INDICATED IN LETTER TO SEC THAT THEY WOULD USE THEIR BEST EFFORTS TO CARRY OUT DISTRIBUTION TO INVESTORS OF ALL ASSETS IN VARIOUS MONDIAL SUB-ACCOUNTS ENVISIONED BY UNCLASSIFIED

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DECREE.

OUR UNDERSTANDING OF DECREE, THAT SUBSTANTIALLY ALL SUCH ASSETS WOULD BE DISTRIBUTED TO INVESTORS, WAS AN IMPORTANT ELEMENT IN OUR AGREEMENT TO ENTER INTO THIS ARRANGEMENT. WE HOPE THAT ANY OF THE TAX QUESTIONS WHICH ARE NOW DELAYING FINAL DISTRIBUTION OF ASSETS TO INVESTORS MAY BE RESOLVED QUICKLY IN A SATISFACTORY MANNER IN ORDER THAT FURTHER HARM AND DELAY TO INVESTORS MAY THEREBY BE AVOIDED.

I WOULD ADD ONLY MY PERSONAL RECOLLECTION THAT AT NO TIME DURING NEGOTIATIONS OR DISCUSSIONS DID ANYONE RAISE ANY QUESTIONS OF A PROSPECTIVE SWISS TAX LIABILITY FOR INVESTORS. DR STUDER HAS TOLD ME THAT IT WAS UNDERSTOOD THAT IF PROGRESS GROUP AND ITS COMMISSIONER, DR STUDER, APPOINTED BY THE RESPONSIBLE SWISS GOVT DEPT TO OVERSEE ITS AFFAIRS, ACCEPTED THE SOLUTION PROPOSED, AND WHICH WE ARE NOW IN PROCESS OF IMPLEMENTING, SUBSTANTIALLY ALL ASSETS WOULD BE RETURNED TO INVESTORS, AND QUESTIONS OF TAX LIABILITY WOULD NOT ARISE. THIS WAS ALSO MY UNDERSTANDING. UNQTE (DRAFT TEXT)

QTE (FINAL PARA, LETTER TO MUELLER): I WOULD APPRECIATE

HAVING THE BENEFIT OF YOUR MDEWS. I HOPE YOU MIGHT FIND IT
POSSIBLE TO WRITE TO DR LOCHER IN SUPPORT OF THIS EFFORT
TO RESOLVE QUESTION NOW DELAYING FINAL SETTLEMENT. UNQTE.
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Sent Date: 02-Dec-1977 12:00:00 am
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